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warranty made for his benefit"; such amendments being proper to make the instruction applicable to the evidence and to prevent a conflict between the instruction and those given for plaintiff.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 664.]

21. Trial (§ 267 (3)*)—Amendment of Instruction as to Notice of Seller of Defects Held Proper to Prevent Conflict between Instructions.—In an action by the buyer of a milking machine against the seller for breach of warranty in which the contract of sale required notice to be given the seller on failure of the machine to work properly, an instruction that notice to a mechanic sent by the seller to install the machinery was not sufficient notice to the seller, unless plaintiff showed that the notice was communicated to the seller, was properly amended by the clause "or acted upon by it"; the amendment being proper to make the instruction applicable to the evidence and necessary to prevent a conflict between the instruction and those given for the buyer.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 664.]

22. Sales (§ 446 (7)*)—Amendment of Instruction Held Not Error.—In an action by the buyer of a milking machine against the seller for breach of warranty, the amendment of an instruction that, if the machine sold to the plaintiff was capable of doing good work with proper management, to find for the defendant, by inserting the words "as installed" after the words "to the plaintiff," was not erroneous as making the instruction misleading.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 664.]

Error to Circuit Court, Fauquier County.

Action by W. S. Cowne against Monroe & Monroe, Inc. From judgment for plaintiff and overruling a motion to set aside the verdict in plaintiff's favor and grant a new trial, defendant brings error. Affirmed.

The other pertinent matters are stated in the opinion of the court.

Hyden & Robinson, John S. Barbour, of Fairfax, and *James R. Caton,* of Alexandria, for plaintiff in error.

Wm. Horgan, of Warrenton, for defendant in error.

CHANDLER *v.* CHANDLER.

June 15, 1922.

[112 S. E. 856.]

1. Divorce(§ 62 (1)*)—Facts Concerning Domicile Jurisdictional.—Jurisdiction to grant divorce being especially statutory and limited under Code 1919, § 5105, all the facts concerning the domicile of the

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

parties concern not merely the venue, but are jurisdictional.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 747.]

2. Divorce (§ 124*)—Showing that Domicile of Origin of Husband Was in State Prima Facie Shows that He Was So Domiciled at Time of Suit.—Proof that the domicile of origin of plaintiff husband was in the state was of itself prima facie evidence that his domicile had been in Virginia for more than a year prior to the commencement of suit, as required by Code 1919, § 5105.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 745.]

3. Divorce (§ 66*)—Wife May Be "Domiciled" in State, But Not a "Resident" There.—Under Code 1919, § 5105, allowing plaintiff in divorce case, if domiciled in the state for a year before suit, to sue either in the county or corporation in which the parties last cohabited, or, if defendant is not a "resident" of the state, in the county or corporation where plaintiff resides, where suit is brought in the corporation of plaintiff husband's residence, the fact that his wife is "not a resident" of the state becomes jurisdictional; but a wife may be not a "resident" of the state, even though "domiciled" in the state, by reason of her husband's domicile there.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Domicile; Resident. For other cases, see 4 Va.-W. Va. Enc. Dig. 747.]

4. Divorce (§ 66*)—Defendant Wife Held "Not a Resident" of Virginia; "Residence."—Under Code 1919, § 5105, allowing plaintiff in divorce case, if domiciled in the state for a year before suit, to sue either in the county or corporation in which the parties last cohabited, or, if defendant is "not a resident" of the state, in the county or corporation where plaintiff resides, where at the time of suit by plaintiff husband, who had been domiciled in the state for a year preceding suit defendant wife occupied a place of abode in the city of Washington separate from that of her husband, she was a resident of that city, and hence "not a resident" of Virginia; for one's place of abode or habitation for the time being, as contradistinguished from the place of a mere transient, or, under some circumstances, even daily presence, for business or pleasure, is the place of one's "residence" within the meaning of the statute.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Residence. For other cases, see 4 Va.-W. Va. Enc. Dig. 747.]

5. Divorce (§ 37 (20)*)—Willful Withdrawal of Privilege of Sexual Intercourse for 3 Years, Accompanied by Willful Breach of Other Marital Duties Destroying Home Life, Held Desertion Sustaining Divorce.—Under Code 1919, § 5103, as to desertion, willful withdrawal by the wife from the husband of the privilege of sexual intercourse,

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

without just cause or excuse, for more than 3 years before suit, and the continuance of such withdrawal for that period next preceding the suit, accompanied by willful conduct by the wife, consisting of groundless charges of infidelity by the husband, and of neglect by the wife of her marital duties with respect to attention to keeping the husband's room and bed clean, and with respect to his meals, thereby destroying home life, making the home an unfit environment for the children, and rendering the marriage state almost intolerable and impossible to be endured, held to constitute willful desertion warranting divorce.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 738.]

Error to Corporation Court of Alexandria.

Suit by Leonard L. Chandler against Rosa B. Chandler. From a judgment for plaintiff, defendant brings error. Affirmed.

T. Morris Wampler, of Washington, D. C., for appellant.
J. K. M. Norton, of Alexandria, for appellee.

FORTUNE *v.* COMMONWEALTH.

June 15, 1922.

[112 S. E. 861.]

1. Depositions (§ 69*)—In Murder Case, Taken at Coroner's Inquest, and Signed by Him at Witnesses' Request, Admissible.—In a trial for murder, it was error to exclude depositions taken at coroner's inquest, and there read to the witnesses, who authorized the coroner to sign for them, offered after laying a foundation as required by Code 1919, § 6216.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 566.]

2. Depositions (§ 88*)—Inaccuracy Affects Only Credibility, and Not Admissibility.—Mere inaccuracy of depositions affects only their credibility, not admissibility.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 571.]

3. Depositions (§ 76*)—Sufficiently Authenticated by Testimony of Coroner at Whose Inquest Taken.—In a trial for murder, depositions taken at a coroner's inquest and read to the witnesses who authorized the coroner to sign for them were sufficiently authenticated by the coroner's testimony to make them at least prima facie evidence of the testimony of these witnesses as given at the inquest.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 572.]

4. Witnesses (§ 379 (10)*)—Accused Entitled to Have Depositions Considered as Affecting Credibility of Testimony of Deponents at Trial.—In a prosecution for murder, accused was entitled to have the jury consider whether depositions taken at a coroner's inquest affected

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.